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# State v. Norman Respondent's Brief Dckt. 43839

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43839 & 43840
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2014-17053 & 2015-11272
	)	
ANTHONY GENE NORMAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Norman failed to establish that the district court abused its discretion, either by imposing concurrent unified sentences of five years, with three years fixed, for aggravated assault, and 10 years, with three years fixed, for rape, or by denying his Rule 35 motion for reduction of his sentences?

Norman Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In case number 43839, Norman pled guilty to aggravated assault and the district court imposed a unified sentence of five years, with three years fixed. (R., pp.150-55.) In case number 43840 Norman pled guilty to rape and the district court imposed a

unified sentence of 10 years, with three years fixed. (R., pp. 239-44.) Norman filed notices of appeal timely from the judgments of conviction. (R., pp.157-60, 246-49.) Norman also filed timely Rule 35 motions for reduction of his sentences. (Supp. R., pp.4-5; Rule 35 Motion filed in Bannock County Case number CR-2015-11272 (Augmentation).) The district court denied Norman's Rule 35 motions. (Supp. R., pp.7-8; 2/22/16 Tr., p.23, L.4 – p.24, L.9; see also Minute Entry & Order filed in Bannock County Case number CR-2015-11272.)

Norman asserts his sentences are excessive in light of his abusive child, drug and mental health issues, family support, and purported remorse. (Appellant's brief, pp.3-6.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for aggravated assault is five years. I.C. § 18-906. The maximum prison sentence for rape is life. I.C. § 18-6104. The district court imposed concurrent unified sentences of five years, with three years fixed, for aggravated assault, and 10 years, with three years fixed, for rape, both of which fall within the statutory guidelines. (R., pp.150-55, 239-44.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Norman's sentences. (12/7/15 Tr., p.19, L.3 – p.21, L.3.) The state submits that Norman has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Norman next asserts that the district court abused its discretion by denying his Rule 35 motions for reduction of his sentences because he has been unable to begin treatment. (Appellant's brief, pp.6-7.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Norman must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Norman has failed to satisfy his burden.

In support of his Rule 35 motions, Norman merely stated that he was unable to immediately access programming because he was, at the time, being housed in the Power County Jail. (2/22/16 Tr., p.23, Ls.9-15.) Norman's complaint that he has not been able to begin treatment is not new information that entitles him to a reduction of

sentence. The district court was aware, at the time of sentencing, of Norman's desire to participate in programming. (12/7/15 Tr., p.12, Ls.5-13.) Further, "alleged deprivation of rehabilitative treatment is an issue more properly framed for review either through a writ of habeas corpus or under the Uniform Post-Conviction Procedure Act." State v. Sommerfeld, 116 Idaho 518, 520, 777 P.2d 740, 742 (Ct. App. 1989) (affirming district court's denial of defendant's I.C.R. 35 motion). Because Norman presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentences were excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

#### Conclusion

The state respectfully requests this Court to affirm Norman's convictions and sentences and the district court's orders denying Norman's Rule 35 motions for reduction of sentence.

DATED this 6th day of July, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of July, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

Court Proceedings before Hon. Stephen S. Dunn, Judge

<p>1 He is a high risk to reoffend, according to the 2 professionals. That's concerning. His prior record is 3 concerning. The fact that he's -- the fact that he has 4 three prior felony convictions and has served a retained 5 jurisdiction and continues with this kind of conduct, 6 and the nature of these crimes, I think in addition to 7 his prior history, in addition to his -- the fact that 8 he's been on a rider, he's been -- he's been -- there's 9 been attempts made to rehabilitate him, and yet we still 10 have this kind of conduct.</p> <p>11 And so I don't think it's even a question in my 12 mind about whether he ought to go to prison. The 13 question is how long and what kind of treatment he ought 14 to get while he's there. And so I think our 15 recommendations this morning are reasonable and within 16 the bounds of reasonableness, given the nature of these 17 cases and the nature of the problems that this defendant 18 exhibits.</p> <p>19 There's no restitution in the aggravated 20 battery case. So as far as I know there's nothing in 21 the other case either, Your Honor.</p> <p>22 THE COURT: Yeah, there is. There's \$900 for 23 the psychosexual.</p> <p>24 What I was confused about, because I didn't see 25 a bill for the polygraph, which there should have been.</p> <p>17</p>	<p>1 It's typically \$300.</p> <p>2 MR. PARRIS: Did Alex do it? I don't remember. 3 It's been so long since I read it.</p> <p>4 That's about right, Your Honor. I guess what 5 I'm saying is I didn't -- there's probably restitution 6 in that regard, but I don't know if there's any 7 restitution being sought by the victim.</p> <p>8 THE COURT: Alex Hamilton did the polygraph. 9 And he usually charges about \$300.</p> <p>10 MR. PARRIS: I think that's about right, Your 11 Honor. That's all I have.</p> <p>12 THE COURT: Thank you.</p> <p>13 Mr. Norman, anything you want to say?</p> <p>14 MR. REYNOLDS: There's two things we dispute.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. REYNOLDS: One, he purports he never called 17 her from the jail, and he was never advised and knew of 18 her age.</p> <p>19 THE COURT: I know. There's a dispute about 20 that, a factual dispute about that. I don't know 21 anything about the jail, and so I'm not taking that into 22 account.</p> <p>23 MR. REYNOLDS: Okay.</p> <p>24 THE COURT: All right. Mr. Norman, you said 25 you don't want to say anything?</p> <p>18</p>
<p>1 THE DEFENDANT: No, sir.</p> <p>2 THE COURT: Is that correct? All right.</p> <p>3 Mr. Norman, I've reviewed this case in detail. 4 I spent a lot of time reviewing it. And the bottom line 5 here is this is a perfect illustration of the concern 6 that's raised. You were charged in 2004 with rape. You 7 did a rider. You -- they put you on probation. You 8 violated that. Or you were -- I'm sorry. You were 9 relinquished.</p> <p>10 The sentence was three plus six. You were 11 paroled twice out of the prison system and were not able 12 to be supervised in the community. You topped out in 13 2014.</p> <p>14 Your parole was violated because you had 15 unapproved association and you wouldn't attend sex 16 offender treatment. And you had five disciplinary 17 issues in prison.</p> <p>18 That is in microcosm as good an illustration of 19 your ability to be supervised as I can imagine. You've 20 been given the treatment that your attorney is arguing 21 for. You went on a sex offender rider. You didn't do 22 it. Then they gave you a chance at probation and parole 23 three times, and you still wouldn't do it.</p> <p>24 And then when you topped out after March 25 of 2014, I got two new felonies; one for violence, and</p> <p>19</p>	<p>1 another one for rape. You'd already been in prison for 2 rape. You should have figured it out: I can't have sex 3 with somebody without checking to make sure that they're 4 not underage.</p> <p>5 Whether you did or did not -- and there's a 6 factual dispute as to whether you knew or not; I'll 7 grant you that. But you should have figured it out, 8 because you've already been in prison for rape once. 9 And you didn't figure it out.</p> <p>10 There's little question in my mind that you are 11 a substantial risk to society. Your LSI is a 46. I 12 haven't seen very many higher than that. The 13 psychosexual raises all kinds of concerns. It says 14 you're a high risk for more sexual offenses.</p> <p>15 So I'm imposing on count one -- case number 16 one, I'm sorry, 14-17053, a fixed sentence of 17 three years followed by an indeterminate sentence of 18 two years, with court costs of \$240.50, a fine of \$500, 19 public defender fees of \$500. Sex offender -- I'm 20 sorry. That's not on that one.</p> <p>21 An NCO for the entire period of incarceration, 22 probation, or parole on that particular case.</p> <p>23 In case 15-11272, I'm imposing a ten year 24 sentence with three fixed, seven indeterminate. 25 Imposing court costs of \$540.50, a fine of \$500.</p> <p>20</p>



Court Proceedings before Hon. Stephen S. Dunn, Judge

1 Restitution of \$1,200. You can object if you want to  
2 the \$300. I've already got the \$900. And public  
3 defender fees of \$500 in that one.  
4 You've got 42 days in which to file an appeal  
5 of this sentence -- these sentences, in both these  
6 cases, but this is the right decision.  
7 If you wish to appeal and cannot afford it, you  
8 can apply for an attorney and the costs of the appeal.  
9 MR. REYNOLDS: At credit for time? He asked  
10 about that.  
11 THE COURT: He'll get credit, whatever the  
12 statute allows.  
13 (End of proceedings this date.)  
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